

Filed for intro on 01/26/98

HOUSE JOINT RESOLUTION 465
By Jackson

A RESOLUTION memorializing the U.S. Congress to amend ERISA to grant authority to the several states to regulate self-funded employer-based health plans.

WHEREAS, the McCarran-Ferguson Act, passed by the U.S. Congress in 1945, established a statutory framework whereby responsibility for regulating the insurance industry was left largely to the states; and

WHEREAS, the Employee Retirement Income Security Act of 1974 (ERISA) significantly altered this concept by creating a federal framework for regulating employer-based pension and welfare benefit plans, including health plans; and

WHEREAS, ERISA preemption effectively blocks states from directly regulating most employer-based health plans, while permitting states to regulate health insurers; and

WHEREAS, because self-funded employer-based health plans are not deemed to be insurance, ERISA preempts them from state regulation and premium taxation; and

WHEREAS, over the past twenty-four years, state governments have gradually become to realize that ERISA is an impediment to ensuring adequate consumer protections for all individuals with employer-based health care coverage and to enacting administrative simplification and cost reduction reforms that would improve the efficiency and equity of their health care markets; and

900000001

90000001

009509

00950916

WHEREAS, available data suggests that self-funding of employer-based health plans is increasing at a significant rate, both among larger and smaller businesses; and

WHEREAS, between 1989 and 1993, the General Accounting Office estimates that the number of self-funded plan enrollees increased by about six million individuals; and

WHEREAS, approximately 40-50% of employer-based health plans are presently self-funded by employers, who retain most or all of the financial risk for their respective health plans; and

WHEREAS, as self-funding of health plans has grown, states have lost regulatory oversight over a growing portion of the health market; and

WHEREAS, as this phenomenon continues, state governments are slowly but surely losing their ability to manage their health care markets; and

WHEREAS, given the improbability of federal reforms to achieve universal health coverage in the near future, many state legislatures are seeking an active role in expanding the number of individuals covered and in controlling health care costs; and

WHEREAS, in a very real sense, ERISA preemption is an obstacle to the states adopting a wide range of health care reform strategies; and

WHEREAS, employers are increasingly adopting funding methods for their health plans that blur the distinction between self-funded and fully insured, including more extensive use of stop-loss coverage and risk-sharing arrangements with managed care organizations; and

WHEREAS, these innovative funding methods have so blurred the distinction between self-funded and fully insured health plans that many experts argue that there is no real distinction at all; and

WHEREAS, the states' inability to protect consumers enrolled in self-funded health plans from employers or plans who fail to provide the anticipated level of health care is gradually eroding the public's confidence in government, even as self-funded plans are afforded an unfair advantage over traditional health insurance providers; and

WHEREAS, the time has now come for the several states to aggressively seek changes in ERISA to give them more flexibility to increase access to health care and to lower health costs; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE-HUNDREDTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, That this General Assembly hereby memorializes the U.S. Congress to amend the Employment Retirement Income Act of 1974 (ERISA) to grant authority to the several states to monitor and regulate self-funded employer-based health plans in the interest of providing greater consumer protection and effecting significant health care reforms at the state level.

BE IT FURTHER RESOLVED, That this General Assembly most fervently urges and encourages each state legislative body of the United States of America to enact this resolution, or one similar in context and form, as a show of solidarity in petitioning the federal government for greater state authority in regulating self-funded employer-based health plans.

BE IT FURTHER RESOLVED, That the Chief Clerk of the House of Representatives is hereby directed to transmit enrolled copies of this resolution to the President of the United States; the Secretary of the U.S. Department of Labor; the Speaker and the Clerk of the U.S. House of Representatives; the President and the Secretary of the U.S. Senate; each member of the Tennessee Congressional delegation; and to the presiding officer of each house of each state legislative body in the United States of America.